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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/662,784	09/15/2000	Malcolm L. Gefter	IMI-044DV3CNRCE3	3152
49442	7590	07/23/2008	EXAMINER	
BAKER & DANIELS LLP			EMCH, GREGORY S	
805 15TH STREET, NW, SUITE 700				
WASHINGTON, DC 20005				
			ART UNIT	PAPER NUMBER
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			07/23/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Response to Amendment

Claims 102, 111 and 112 have been amended, and new claim 116 has been added as requested in the amendment filed on 28 April 2008. Following the amendment, claims 95, 102-104 and 111-116 are pending in the instant application.

Newly presented claim 116 is withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. The claim recites numerous epitopes that are nonelected as a result of the restriction requirement dated 16 May 2006. Applicants timely traversed the restriction (election) requirement in the reply filed on 16 November 2006.

Claims 95, 102-104 and 111-115 are under examination in the instant office action.

Any objection or rejection of record, which is not expressly repeated in this action has been overcome by Applicants' response and withdrawn.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims

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are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

The obviousness-type double patenting rejections of claims 95, 102-104 and 111-115 as being unpatentable over claims 1-33 of U.S. Patent No. 6,019,972 and over claims 1-24 of U.S. Patent No. 5,547,669 are maintained for reasons of record and as set forth below.

In the reply filed on 28 April 2008, Applicants assert that upon indication of allowable claims in the pending application, Applicants will consider submitting a terminal disclaimer, if appropriate.

Until a terminal disclaimer is received and approved, the rejections are maintained.

Conclusion

No claims are allowed.

THIS ACTION IS MADE FINAL. Applicants are reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Advisory Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory S. Emch whose telephone number is (571) 272-8149. The examiner can normally be reached 9:00 am - 5:30 pm EST (M-F).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey J. Stucker can be reached at (571) 272-0911. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/G.E./

Gregory S. Emch, Ph.D.
Patent Examiner
Art Unit 1649
17 July 2008

/Elizabeth C. Kemmerer/
Primary Examiner, Art Unit 1646